

Kennedys

Our ref USA136.1003569

By Email

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October 30, 2020

Re: **Insurer:** Allied World National Assurance Company
 Insured: SITO Mobile, Ltd. ("SITO")
 Policy No.: 0309-6252 (the "Allied World Excess Policy")
 Policy Period: May 31, 2016 to May 31, 2017
 Limits: \$5 million x/s \$5 million
 Matter: SEC v. *Hug et al.*, 19-cv-16290-ES-ESK (D. N.J.) (the "SEC Enforcement Action")

Dear Mr. Bergman:

We are in receipt of your October 29, 2020 letter, where you state, "Thank you for confirming that Allied received actual notice of this claim by no later than March 18, 2017." You then ask Allied World to "promptly confirm coverage in writing so as to avoid any lapses in coverage and representation."

We are confused by your letter. The Insured's March 18, 2017 notice to Allied World of the March 17, 2017 informal inquiry letter from the SEC to SITO Mobil, Ltd. does not relieve the Insured from providing notice to Allied World of the SEC Enforcement Action. As we already explained, prior to your October 15, 2020 letter, Allied World has no record of any Insured or broker providing Allied World with notice of the SEC Enforcement Action or the July 5, 2017 Formal Order of Investigation.

Because the Insured did not provide notice of the SEC Enforcement Action to Allied World until October 15, 2020, over 14 months after the SEC filed the SEC Enforcement Action, the Insured breached a condition precedent to coverage. *See Templo Fuente De Vida Corp. v.*

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National Union Fire Ins. Co., 224 N.J. 189, 209-10 (2016). Therefore, coverage is not available for the SEC Enforcement Action under the Allied World Excess Policy.

Allied World continues to reserve all rights.

Sincerely,

/s/ Maurice Pessio

Maurice Pessio
Partner
for Kennedys

cc: Via Email

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